

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 1, 2001

IN RE:)	
)	
ALL TELEPHONE COMPANIES TARIFF)	DOCKET NO.
FILINGS REGARDING RECLASSIFICATION)	97-00409
OF PAY TELEPHONE SERVICE AS REQUIRED)	
BY FEDERAL COMMUNICATIONS COMMISSION)	
(FCC) DOCKET 96-128)	

INTERIM ORDER

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The merits of this matter came before the Tennessee Regulatory Authority (“TRA”) at the regularly scheduled Authority Conference held on December 19, 2000. This is an Interim Order and shall be incorporated into the Final Order as if fully rewritten therein.

I. Factual and Procedural History

Pursuant to § 276 of the Federal Telecommunications Act of 1996 (“Act”), the Federal Communications Commission (“FCC”) issued a series of orders directing state commissions to enforce the FCC’s newly promulgated rules. These rules required telephone companies to file tariffs with state commissions reclassifying payphones and removing subsidies associated with payphone operations from other classes of services.¹

On February 28, 1997, BellSouth Telecommunications, Inc. (“BellSouth”) filed a tariff in Docket No. 97-00346,² and on January 10, 1997, United Telephone-Southeast, Inc. (“UTSE”) filed two tariffs in Docket Nos. 97-00345 and 97-00344.³ The tariffs each contained an effective date of April 1, 1997.⁴ The Tennessee Payphone Owners Association (“TPOA”) filed a petition to intervene in each of the dockets on March 14, 1997.

Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., Millington Telephone Co., Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crockett Telephone Co., Citizens

¹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC Docket No. 96-388, CC Docket No. 96-128, 11 FCC Rcd 20,541 (Sept. 20, 1996) (Report and Order) (hereinafter *Report and Order*); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC Docket No. 96-439, CC Docket No. 96-128, 11 FCC Rcd 21,233 (Nov. 8, 1996) (Order on Reconsideration) (hereinafter *Order on Reconsideration*).

² See *Tariff Filing by BellSouth Telecommunications to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-067)*, TRA Docket No. 97-00346. BellSouth filed a *Petition of BellSouth Telecommunications, Inc. for Certification that Its Intrastate Tariffs for Payphone Services are Consistent with the FCC’s “New Services Test”* on May 19, 1997. In this filing, BellSouth requested that the TRA rule that sections A7.4.5 and A7.8.2 of its General Subscriber Services Tariff comply with the FCC’s requirements.

³ See *Tariff Filing by United Telephone Southeast to Comply with the FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-010)*, TRA Docket No. 97-00345; *Tariff Filing by United Telephone Southeast to Revise General Subscribers Tariff to Comply With the FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-007)*, TRA Docket No. 97-00344.

⁴ UTSE later filed an amended tariff on May 19, 1997, with an effective date of April 15, 1997.

Telecommunications Company of Tennessee L.L.C. and Citizens Telecommunications Company of the Volunteer State L.L.C. (collectively "Citizens"), Loretto Telephone Co., and the Telephone Data System Companies ("TDS"), which include Tennessee Telephone Co., Humphreys County Telephone Co., Concord Telephone Exchange, Inc., and Tellico Telephone Co., each filed tariffs and revised tariffs in January, February, and/or March 1997. All the tariffs contained an effective date of April 15, 1997.

The TRA considered the tariffs in Docket Nos. 97-00344, 97-00345, and 97-00346 and the TPOA's petitions to intervene at a regularly scheduled Authority Conference on March 18, 1997. Thereafter, the TRA entered an order on April 4, 1997, in Docket Nos. 97-00344 and 97-00345 and on April 7, 1997, in Docket No. 97-00346 granting the TPOA's petitions to intervene, approving the respective tariffs pending the outcome of a contested case, and opening consolidated docket No. 97-00409 to proceed with the contested case.

By letter of April 9, 1997, AT&T Communications of the South Central States, Inc. ("AT&T") requested that the TRA consider its petitions to intervene filed on April 2, 1997 in Docket Nos. 97-00344, 97-00345, and 97-00346 as filed in the new, consolidated docket. The Consumer Advocate Division of the Office of the Attorney General and Reporter ("Consumer Advocate") filed a *Petition to Intervene* on April 14, 1997.⁵

At the regularly scheduled Authority Conference held on April 15, 1997, the TRA appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer in Docket No. 97-00409. The TRA granted AT&T's and the Consumer Advocate's petitions to intervene, ordered TDS to reduce its rates and eliminate the subsidy to payphones from regulated services revenues through tariff filings, and approved the tariffs of TDS,⁶ Loretto Telephone Co., Citizens, Peoples

⁵ This division is now known as the Consumer Advocate and Protection Division.

⁶ These tariffs added coin supervision and did not remove the subsidy.

Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crockett Telephone Co., Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., and Millington Telephone Co. pending the outcome of the contested case.⁷

On April 22, 1997, MCI Telecommunications Corporation ("MCI") filed a petition to intervene. At the regularly scheduled Authority Conference held on April 29, 1997, the TRA unanimously voted to grant the petition and entered a written order granting the petition on May 12, 1997.

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate requested that the TRA bifurcate Docket No. 97-00409 to include BellSouth, UTSE, and Citizens and then open another docket to include the remaining, smaller, independent local exchange carriers ("independent LECs"). The Pre-Hearing Officer ordered the bifurcation after finding that the expense of preparing cost studies for this docket would be too great for the independent LECs. In addition, the Pre-Hearing Officer obtained the parties' agreement to a procedural schedule. The Pre-Hearing Officer memorialized this decision and the schedule in the *Preliminary Report and Recommendation of the Hearing Officer* entered on May 29, 1997 and in the *Order Establishing a Separate Docket for the Smaller Companies* entered on June 6, 1997.⁸

On June 26, 1997, the TPOA filed *TPOA Request for Continuance*. The TPOA requested that the Pre-Hearing Officer continue the procedural schedule for approximately thirty (30) days to allow the TPOA to consult with expert witnesses and prepare for the hearing. On July 8, 1997, the Pre-Hearing Officer held a Pre-Hearing Conference to address several issues including

⁷ The TRA entered written orders on April 24, 1997 and May 2, 1997 memorializing the rulings rendered during the April 15, 1997 TRA Conference. The April 24, 1997 Order granted AT&T's petition to intervene. The May 2, 1997 Order appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer, granted the Consumer Advocate's petition to intervene, approved the tariffs, and ordered TDS to reduce the rates and eliminate the subsidy to payphones from regulated services revenues.

⁸ The docket involving the independent LECs was assigned No. 97-01181.

the *TPOA Request for Continuance*. During the conference, the Pre-Hearing Officer granted the TPOA's request and scheduled a status conference for September 3, 1997 to finalize the issues list and amend the procedural schedule. The Pre-Hearing Officer recounted these rulings in the *Second Report and Recommendation of the Hearing Officer* entered on July 15, 1997.

On September 3, 1997, the Pre-Hearing Officer conducted the previously scheduled status conference. During the conference, the parties determined that the issues included: 1) the calculation of subsidies to or from payphone operations; 2) the rate changes to remove any determined subsidies; and 3) an access line rate for payphones. Also during the conference, the Consumer Advocate requested a delay in the procedural schedule until after the first of 1998. The TPOA and UTSE favored the requested delay. MCI expressed no preference, and BellSouth opposed the delay. The Pre-Hearing Officer agreed to the requested delay and determined that another status conference was necessary to establish a new procedural schedule. The Pre-Hearing Officer entered the *Third Report and Recommendation of the Hearing Officer* reflecting this decision on September 16, 1997, which the TRA adopted at the October 7, 1997 Authority Conference.

At the second status conference held on September 23, 1997, the parties stated that they had not settled any of the issues and agreed to a new procedural schedule.⁹ The Pre-Hearing Officer entered the *Fourth Report and Recommendation of the Hearing Officer* on September 24, 1997 memorializing the September 23rd rulings, which the TRA adopted at the October 7, 1997 Authority Conference.

On March 4, 1998, the TPOA filed an *Agreed Motion for Continuance* on behalf of all the parties. The TPOA asserted that the TRA should continue the docket until it completes the

⁹ During the September 23, 1997 status conference, the Pre-Hearing Officer restated his September 3, 1997 ruling granting the requested delay in order to avoid any confusion. See *Transcript of Pre-Hearing Conference*, p. 3-4 September 23, 1997.

Permanent Prices docket and the Universal Services docket, Docket Nos. 97-01262 and 97-00888 respectively, because both dockets involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve payphones. In addition, the motion stated that the parties had agreed to the postponement because, as required by the FCC, the final rates would be applied retroactively to April 15, 1997. The Pre-Hearing Officer agreed to the motion and granted the continuance in the *Initial Order for Extension of Time* filed on March 27, 1998.

Docket No. 97-00409 remained inactive until March 21, 2000, when the TPOA filed a letter requesting that the Pre-Hearing Officer reconvene the proceeding and set a procedural schedule. The TPOA argued that the docket should be reconvened because the Permanent Prices docket appears to be reaching a conclusion, the FCC released a decision providing further guidelines for the determination of payphone rates,¹⁰ and the members of the TPOA need relief from existing rates. BellSouth filed a responsive letter on March 31, 2000. Although BellSouth agreed that the Pre-Hearing Officer should reconvene the proceeding, it did not agree with the TPOA's characterization of the FCC's recent decision. UTSE and Citizens filed a letter on May 12, 2000 wherein the parties argued that the request to reconvene the docket is premature because the TRA has not issued final orders in either the Permanent Prices docket or the Universal Services docket.

On June 22, 2000, the TPOA filed a *Motion for Interim Relief*. In its motion, the TPOA stated that its members who operate payphones in the BellSouth region pay average rates of \$40.00 per line¹¹ and that its members need immediate relief if they are to continue providing

¹⁰ See *In re Wisconsin Pub. Serv. Comm'n*, CCB/CPD No. 00-1, 2000 WL 232182 (March 2, 2000) (Order Directing Filings).

¹¹ Although the parties routinely refer to the "\$40.00 interim rate," the actual interim rate is the tariffed rate for business measured service. According to the TPOA, the total charges are approximately \$40.00 per month.

service. As evidence, the TPOA attached affidavits from payphone service providers (“PSPs”) who claimed to have suffered severe economic harm as a result of the continuation of the docket.

The Consumer Advocate, UTSE, and BellSouth filed comments to the *Motion for Interim Relief* on June 30, 2000. The Consumer Advocate supported a swift resolution of the payphone proceeding and interim relief for PSPs. In its response, UTSE stated that the TPOA’s reasons for relief contain assertions regarding BellSouth that could adversely impact UTSE if such assertions are accepted as true and applied to UTSE as well as BellSouth. UTSE noted the dramatic increase in independent PSPs, despite the purported exorbitant rate. UTSE also asserted that the PSPs’ revenue decreases and other alleged economic harm stem from increased competition; increased costs, other than those in dispute; and the PSPs’ failure to collect dial around compensation from inter-exchange carriers. BellSouth reiterated UTSE’s arguments regarding the claims of the PSPs. In addition, BellSouth objected to the adoption of a revised interim rate without the benefit of testimony, cross-examination, or cost studies.

The TPOA filed its reply on July 7, 2000. The TPOA reiterated its position that BellSouth’s payphone rates are excessive and argued that a small reduction in the monthly charge would keep more payphones in operation. The TPOA also argued that BellSouth failed to provide a legal justification for its contention that an evidentiary hearing is required for the setting of interim rates.

On July 21, 2000, the Pre-Hearing Officer filed an Order, which reconvened Docket No. 97-00409 and directed the parties in Docket Nos. 97-00409 and 97-01181 to file comments on three options concerning how to proceed with the two dockets. The three options presented called for either: combining the dockets, maintaining separate proceedings, or maintaining separate proceedings with the Docket No. 97-01181 parties intervening in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates.

In the July 21, 2000 Order, the Pre-Hearing Officer also denied the TPOA's *Motion for Interim Relief* and set out a swift and efficient procedural schedule to which the parties had agreed. The Pre-Hearing Officer first focused on the \$18.90 rate proposed by the TPOA to be the revised interim rate. The Pre-Hearing Officer acknowledged that the parties did not agree to the TPOA's \$18.90 rate. The Pre-Hearing Officer then found that the \$18.90 rate was not based on an evidentiary record and stated that there were disputed issues related to the method used to calculate that rate. Given the disputed issues, the Pre-Hearing Officer concluded that the \$18.90 rate could not be adopted absent the development of an evidentiary record or agreement of the parties. In addition, the Pre-Hearing Officer determined that any further delay in setting permanent rates harms competition in the payphone market.

On July 26, 2000, the TPOA filed an Appeal of the July 21st Order. The TPOA argued that the Pre-Hearing Officer's reasons underlying the decision to deny the TPOA's *Motion for Interim Relief* were unsound and inconsistent with the TRA's rulings in other cases.

Concurrent with the above action, the parties filed comments on the three options proffered by the Pre-Hearing Officer concerning how to proceed with Docket Nos. 97-00409 and 97-01181. The TPOA filed its comments on July 21, 2000 and argued that TDS should be a party to 97-00409, not 97-01181. TDS and the other independent LECs also filed comments on July 21, 2000. These companies argued in favor of the third option, maintaining separate dockets with the Docket No. 97-01181 parties intervening in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates. Citizens opted for combining the dockets.

After considering the comments and arguments of the parties, the Pre-Hearing Officer filed an Order on July 31, 2000. In the Order, the Pre-Hearing Officer found that none of the parties had provided a compelling reason to overturn the June 6, 1997 Order bifurcating the dockets. The Pre-Hearing Officer reaffirmed his previous conclusion that the parties to Docket

No. 97-01181 should be spared the expense associated with filing cost studies in Docket No. 97-00409.

At the August 1, 2000 Authority Conference, the Directors addressed only the procedural schedule set forth in the July 21st Order. Thereafter, a discussion ensued related to the TPOA's Appeal and subsequent filings directed at the July 31st Order. Director Greer, as the Pre-Hearing Officer, asked BellSouth to file its response to the TPOA's Appeal on August 9, 2000, and the other parties to file any objections to the July 31st Order by August 9, 2000.

As a result of the Pre-Hearing Officer's directions, the parties filed numerous documents from August 3, 2000 through August 11, 2000. On August 3, 2000, the TPOA filed an Objection to the July 31st Order. In its Objection, the TPOA disagreed with the Pre-Hearing Officer's decision to classify "TDS Telecom among the state's 'small' local exchange carriers, rather than with the larger carrier[s] for the purpose of establishing cost-based payphone rates." TDS filed a response to the TPOA's Objection on August 10, 2000. Citizens and BellSouth filed their responses to the TPOA's Appeal on August 9, 2000, and UTSE filed a letter advocating denial of the TPOA's Appeal on August 11, 2000. The TPOA replied to BellSouth's response on August 11, 2000.

At the August 15, 2000 Authority Conference, the Directors found that during the May 29, 1997 Pre-Hearing Conference, the Pre-Hearing Officer provided the opportunity for the parties to determine which parties should participate in Docket Nos. 97-00409 and 97-01181. At that time, it was determined that TDS would be a party to Docket No. 97-01181. Not only were there no objections to this determination, but the TPOA specifically stated that the decision should be left to TDS.¹² During the August 15th Conference, the Directors also found that the most efficient manner in which to proceed with this docket is to set permanent rates quickly, but

¹² See *Transcript of Pre-Hearing Conference*, p. 31 (May 29, 1997).

the TPOA should be permitted to renew its *Motion for Interim Relief* if a breakdown in the procedural schedule occurs. Accordingly, the Directors voted unanimously to approve the Pre-Hearing Officer's Orders of July 21st and 31st, which retained TDS in Docket No. 97-01181 and denied the *Motion for Interim Relief*.

On August 17, 2000, AT&T filed its *Notice of Withdrawal of Intervention*. In its notice, AT&T stated that its interests no longer required AT&T's participation in the proceeding. Accordingly, AT&T withdrew from the docket.

On August 25, 2000, the Consumer Advocate filed a *Motion to Compel and to Modify Scheduling Order*. In the motion, the Consumer Advocate alleged that UTSE had failed to adequately respond to the Consumer Advocate's data requests and that such responses were necessary to the development of the Consumer Advocate's case. The TPOA responded to the motion and suggested that the Pre-Hearing Officer require UTSE to file a cost study utilizing a forward-looking methodology. UTSE argued that the Consumer Advocate's motion was vague and, with respect to the modification of the scheduling order, argued that the Consumer Advocate did not adequately explain the necessity of the action. UTSE replied to the TPOA's response on September 6, 2000, contending that it was premature for the Pre-Hearing Officer to determine which pricing methodology should be used. The Pre-Hearing Officer issued an Order on September 11, 2000 granting in part the motion to compel while denying the motion to alter the procedural schedule.

BellSouth and UTSE filed their cost studies on September 15, 2000,¹³ and Citizens filed their cost studies on August 15, 2000.¹⁴ The LECs¹⁵ and the TPOA also filed direct testimony in

¹³ BellSouth attached its cost study to the direct testimony of Daonne Caldwell, and UTSE attached its 1996 cost study to the direct testimony of Jeffrey P. Caswell.

¹⁴ Citizens attached its cost study to its responses to the TPOA's discovery requests.

¹⁵ For the purposes of this Order, the LECs include BellSouth, UTSE, and Citizens.

support of their cost studies on September 15, 2000. BellSouth filed the testimony of Thomas F. Lohman, D. Daonne Caldwell, and Sandy E. Sanders. Citizens filed the testimony of Scott Kitchen. UTSE filed the testimony of Jeffrey P. Caswell. The TPOA filed the testimony of Don J. Wood.

On October 5, 2000, the TPOA filed a *Motion to Compel* BellSouth to furnish certain information concerning the calculation of overhead costs via the Total Elemental Long Run Incremental Cost (“TELRIC”) calculator. BellSouth responded that it had not performed a TELRIC study, that it did not have a duty or obligation to produce the requested documents, and that the Pre-Hearing Officer should deny TPOA’s motion because production of the requested information would be unduly burdensome.

On October 6, 2000, BellSouth filed the rebuttal testimony of Sandy E. Sanders, UTSE filed the rebuttal testimony of Jeffrey P. Caswell, and the TPOA filed the rebuttal testimony of Don J. Wood. Citizens did not file any rebuttal testimony.

At a Pre-Hearing Conference held on October 10, 2000, the Pre-Hearing Officer addressed the TPOA’s *Motion to Compel* and set a schedule to completion. The Pre-Hearing Officer found, consistent with the September 11, 2000 Order, that BellSouth should not be compelled to provide the TPOA with the TELRIC study as requested, but that BellSouth should provide all data necessary for the TPOA to develop an alternative cost study in opposition to BellSouth’s position. As to how the case would proceed before the Authority, the parties agreed to having the Authority decide the case based on the filed testimony and evidence in the record and to presenting oral arguments on October 25, 2000 in lieu of filing post-hearing briefs. The Pre-Hearing Officer also ordered that any further motions in this docket must be filed by October 20, 2000, and scheduled a final Pre-Hearing Conference for October 24, 2000 to consider any such motions.

BellSouth and the TPOA filed supplemental rebuttal testimony on October 20, 2000. BellSouth proffered the supplemental rebuttal testimony of D. Daonne Caldwell, and the TPOA filed supplemental rebuttal testimony of Don J. Wood.

At the October 24, 2000 Pre-Hearing Conference, there were no outstanding motions to consider. The Pre-Hearing Officer did, however, resolve certain procedural matters. First, the Pre-Hearing Officer was informed by the TPOA that the parties had not been able to negotiate a settlement. Second, the Pre-Hearing Officer verified that the time allotted for oral argument would be twenty (20) minutes per party, but that the Consumer Advocate and TPOA could divide their forty (40) minutes as they deemed necessary. Lastly, the Pre-Hearing Officer informed the parties that the TRA was reserving the right to issue data requests following the presentation of oral arguments.

The Directors heard oral arguments in this matter on October 25, 2000. The parties in attendance were:

BellSouth Telecommunications, Inc. – **Guy M. Hicks**, Esquire, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **Langley Kitchings**, Esquire, 675 W. Peachtree Street, Suite 4300, Atlanta, GA 30375;

Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State – **Guilford F. Thorton, Jr.**, Esquire, Stokes, Bartholomew, Evans & Petree, Suntrust Center, Suite 2800, 424 Church Street, Nashville, TN 37219;

Consumer Advocate Division, Office of the Attorney General – **L. Vincent Williams**, Deputy Attorney General, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;

Tennessee Payphone Owners Association – **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

Telephone Data System Companies – **T. G. Pappas**, Esquire, Bass, Berry & Sims PLC, 2700 First American Center, Nashville, TN 37238; and

United Telephone Southeast, Inc. – **James B. Wright**, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900.

During the October 25th oral arguments, the TPOA orally moved for an award of prejudgment interest. Thereafter, the Directors heard from opposing parties and ultimately requested the TPOA file a written motion to ensure clarity of the motion. The TPOA complied with the TRA's request and filed its *Motion for Prejudgment Interest* on October 26, 2000 and *Memorandum of Law in Support of Motion for Prejudgment Interest* on October 31, 2000. In its motion, the TPOA argued that it was entitled to prejudgment interest pursuant to Tenn. Code Ann. § 47-14-123. The Consumer Advocate filed a memorandum of law in support of the motion on November 3, 2000. On this same day, BellSouth and UTSE filed responses opposing the motion. As part of their arguments, BellSouth and UTSE contended that the TRA lacked authority to award prejudgment interest pursuant to Tenn. Code Ann. § 47-14-123.

On October 27, 2000, the TRA issued data requests to BellSouth, UTSE, and Citizens. BellSouth and UTSE filed their responses to the data requests on November 8, 2000. BellSouth failed to answer requests number one and two and instead, asserted an objection based on relevance. Citizens filed its responses on November 14, 2000.

On November 12, 2000, the TPOA filed a *Motion to File a Reply Brief* with an attached brief. The TPOA argued that it had not addressed the issue of whether the TRA has jurisdiction to award prejudgment interest in either its motion or memorandum. The TPOA contended that it should be provided the opportunity to argue in support of jurisdiction because BellSouth and UTSE advanced the argument of lack of jurisdiction.

The Directors considered BellSouth's objections to the data requests and the *Motion to File a Reply Brief* during the regularly scheduled TRA Conference on November 21, 2000. The Directors found that BellSouth's objections to the data requests were without merit and that the TPOA, as the movant, should have the final opportunity to reply to opposing arguments.

Therefore, the Directors voted unanimously to overrule the objections and grant the motion. These rulings were memorialized in an Order entered on January 4, 2001.

II. Issues

As provided by § 276 of the Act, the purpose of this docket is to establish payphone rates and remove any subsidies benefiting local exchange carriers' ("LECs") payphone affiliates and operations. In order to fulfill this purpose, the TRA must address certain issues including: A) what method should the LECs use to charge consumers for the service, i.e., rate design; B) what standard and/or test should the TRA use to calculate payphone access line rates; C) issues related to the application of the new services test such as whether the LECs should be permitted to recover the interstate line charges¹⁶ in their intrastate payphone rates and the amount of any reasonable allocation of overhead; D) the calculation of payphone access line rates; E) whether the calculated rates comply with state law and any other requirements; and F) whether the LECs are required to recalculate the payphone subsidy amounts. Additionally, in recognition of the FCC's requirement that the LECs reimburse payphone owners the amount overpaid since April 15, 1997, the TRA must: G) determine the method for calculating the amount of such reimbursement and order the payment thereof.

III. Findings and Conclusions

A. Rate Design

The TPOA recommended that the TRA adopt a flat rate for payphone service that encompasses both non-traffic sensitive and usage sensitive costs. The LECs did not explicitly address the rate design issue. Instead, they supported their existing tariffed rates, which contain separate components for non-traffic sensitive service and usage.

¹⁶ The interstate line charges are the Subscriber Line Charge ("SLC"), End User Common Line Charge ("EULC"), and Primary Interexchange Carrier Charge ("PICC").

The TRA finds that a single, flat rate, as proposed by the TPOA, may force LECs to incur unrecovered costs due to the variance in usage between payphone locations. Conversely, the LECs may reap a windfall by serving payphone locations that have below average usage. Consistent with the TRA's approach in establishing a rate design for unbundled network elements ("UNEs"), the Directors voted unanimously that payphone rates should be designed to recover costs in the manner in which costs are incurred. Thus, the TRA held that payphone rates should include a flat rate component to recover the non-traffic sensitive costs of the loop and a usage rate component to recover the traffic sensitive costs of the switched network.

It is important to note that the current payphone rates contained in the LECs' tariffs are deaveraged; that is, the rates vary according to rate group or local exchange. In certain circumstances, such as setting UNE rates, the goal of promoting efficient competition supports the establishment of deaveraged rates. Such may not be the case, however, with payphone rates. The intent of § 276 of the Act is to "promote competition among payphone service providers and promote the widespread deployment of payphone services"¹⁷ While the goal of promoting payphone competition will be served by setting rates consistent with the FCC's orders as well as federal and state law, the goal of widespread deployment of payphone services, as alluded to by the Consumer Advocate's oral arguments, may best be served by average rates. It could be argued that average rates would better ensure the placement of payphones in high-cost regions. Moreover, payphone services are complete retail services as opposed to UNEs, for example, where deaveraging is appropriate. Notwithstanding the foregoing, the record in this proceeding does not support any particular deaveraging methodology. Therefore, the TRA voted unanimously to establish a single, non-traffic sensitive rate and a single, usage sensitive rate for

¹⁷ 47 U.S.C. § 276(b)(1).

each LEC's payphone products. To further study the deaveraging issue, the TRA directed the parties to file comments on the deaveraging issue **no later than February 16, 2001.**

B. Standard and/or Test for Calculating Rates

In its payphone service orders, the FCC has indicated that states must use the "new services test" when establishing intrastate payphone rates pursuant to § 276 of the Act.¹⁸ The new services test creates a price floor equal to the direct or economic cost of providing a service, including a reasonable rate of return.¹⁹ Additionally, the new services test creates a price ceiling equal to the direct cost plus a reasonable allocation of overhead cost.²⁰ Thus, the new services test produces a rate that is restricted to a reasonable range of prices. The new services test does not mandate the use of any particular costing methodology; however, once a LEC selects a particular method for computing costs, it must consistently apply that same methodology in arriving at the direct costs for all related services.²¹

Additionally, any rates calculated pursuant to the new services test must comply with § 276 of the Act and state law. Section 276 of the Act prohibits payphone rates from including subsidies to or from other telecommunications services and creating preferences to a LEC's payphone operation.²² As for state law, the LECs in this docket are price-regulated companies whose rates must comply with applicable statutes, including Tenn. Code Ann. §§ 65-5-208 and 65-5-209. Furthermore, the payphone rates set in this proceeding must be consistent with the state's general telecommunications policy established in Tenn. Code Ann. § 65-4-123. Lastly,

¹⁸ See *Order on Reconsideration*, ¶ 163; *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, 11 FCC Rcd. 858, ¶ 41 (released September 20, 1995) (Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1) (hereinafter *Second Notice*).

¹⁹ See *Second Notice*, ¶ 41.

²⁰ See *id.*

²¹ See *id.*

²² See *Report and Order*, ¶ 2.

the rates established in this docket must be cost-based and non-discriminatory, which is consistent with the mandates of § 276 and Tenn. Code Ann. § 65-5-208(c) listed above.

Based on the foregoing, the Directors voted unanimously to set rates that are: 1) compliant with the new services test; 2) consistent with § 276 of the Act; 3) nondiscriminatory; and 4) cost-based.

C. Common Issues Related to the Application of the New Services Test

1. Recovery of the Subscriber Line Charge (“SLC”), End User Common Line Charge (“EULC”), or Primary Interexchange Carrier Charge (“PICC”) in Payphone Rates

The TPOA argued that the LECs should not be able to bill PSPs for the SLC, EULC, or PICC. According to the TPOA, these charges were designed to permit LECs to recover the cost of the local loop attributable to interstate services. The TPOA further contended that payphone rates that are based on jurisdictionally unseparated costs²³ allow for double recovery of that portion of the payphone loop costs that is attributable to interstate services. Thus, the TPOA argued that payphone rates must be adjusted to eliminate the double recovery.

BellSouth and UTSE countered that the SLCC, EULC, and PICC are charges required by the FCC to recover regulated costs assigned to the interstate jurisdiction and no adjustments are needed to calculate cost-based rates. BellSouth also contended that the FCC requires PSPs to pay these charges for all payphone lines.

The TRA found that payphone rates that are based on jurisdictionally unseparated costs are designed to recover a portion of the same costs that the SLC, EUCL, and PICC are intended to recover. The TRA further found that LECs are authorized to collect the SLC, EULC, and PICC revenues from PSPs. Therefore, setting rates based on jurisdictionally unseparated costs and allowing the LECs to assess the federal charges on PSPs in addition to collecting the rate

²³ Jurisdictionally unseparated costs include both interstate and intrastate costs.

would result in double recovery. For this reason, the TRA voted unanimously that the LECs should base their payphone rates on jurisdictionally separated costs or the TRA should adjust the rates, if the LEC based its rates on jurisdictionally unseparated costs.

In order to adjust the rates, the TRA looked to the FCC and found that the FCC has traditionally used a seventy-five percent (75%) intrastate/twenty-five percent (25%) interstate separations factor in order to segregate non-traffic sensitive costs²⁴ between the two jurisdictions.²⁵ Thereafter, the Directors voted unanimously to apply the seventy-five percent (75%) intrastate cost separations factor to the non-traffic sensitive costs submitted by any LEC using jurisdictionally unseparated costs. Accordingly, the direct costs of the loop submitted by BellSouth and UTSE should be multiplied by seventy-five one-hundredths (.75) in order to obtain the intrastate direct costs of providing the payphone line.

2. Reasonable Allocation of Overhead

An issue common to all the LECs is the determination of a reasonable allocation of overhead costs. The TPOA argued that the LECs must make an affirmative demonstration supported by cost studies that the overhead costs included in the proposed payphone rates are reasonable.²⁶ The TPOA contended that the LECs should use the TELRIC calculator to allocate overhead costs. BellSouth and UTSE relied on cost-price ratios to support their overhead allocations. BellSouth also argued that it should be afforded more flexibility than allowed by TELRIC in pricing its payphone lines because the provisioning of payphone lines is a retail service, not a UNE regulated by §§ 251 and 252 of the Act.

²⁴ An example of a non-traffic sensitive cost is the cost of the loop. This same analysis would not apply to the calculation of the usage rate, which is traffic sensitive.

²⁵ See 47 C.F.R. § 36.154.

²⁶ The TPOA did not challenge Citizens overhead allocations as Citizens was the only LEC to make an affirmative demonstration through its cost studies that its overhead loadings were reasonable.

The TRA found that the new services test does not require the use of any particular methodology to determine the amount of the reasonable allocation of overhead costs. Although payphone service is an intermediate service sold by LECs to PSPs, payphone services are more closely akin to retail services than to UNEs. Payphone services are complete, operable service offerings that LECs market to a certain group of customers, PSPs. Unlike UNEs, payphone service is a marketable service that does not have to be combined with any other element in order for it to function at the retail level. Based on these findings, the Directors voted unanimously that TELRIC pricing is not required and that cost-price ratio comparisons generally can be used to demonstrate the reasonableness of overhead loadings for payphone services.

The TRA further held that cost-price ratios for payphone service should be compared to other complete services, not to low-cost rate elements of a service as suggested by BellSouth. BellSouth testified that the FCC has accepted, as reasonable, cost-price ratios for complete services ranging from seventy one-hundredths (.70) to sixty-seven one hundredths (.67). The use of such ratios would permit overhead loadings that result in prices of one and four-tenths (1.4) to one and five-tenths (1.5) times greater than direct cost.²⁷ This range of overhead loadings is consistent with the amount of overhead cost that Citizens computed for its payphone services without objection from the TPOA.

Based on this evidence, the Directors voted unanimously to allow BellSouth to assess a reasonable allocation of overhead for each of BellSouth's payphone products that, at a maximum, result in a rate that is one and five-tenths (1.5) times greater than direct cost.²⁸ The Directors also voted unanimously to allow Citizens to set payphone rates that, at a maximum, are

²⁷ BellSouth's testimony that the cost-price ratios for certain elements of its services range from one and one-tenth (1.1) times greater than direct cost to fifty (50) times greater than direct cost is of no value in assessing whether overhead loadings for payphone services are reasonable. While it may be appropriate to charge \$0.01 for an element of a service that has a direct cost of \$0.0002 ($.002 \times 50 = .01$), it does not necessarily follow that it is appropriate to charge \$500 for a service that has a direct cost of \$10 ($10 \times 50 = 500$).

²⁸ This level of overhead loading represents a cost-price ratio of .6666.

based on the overhead allocation calculations contained in their cost studies because the allocations were not challenged and are consistent with the cost-price ratio found to be reasonable for BellSouth.²⁹

D. Application of the New Services Test

1. BellSouth's Rates

The parties' only disagreements over the direct costs proposed by BellSouth relates to BellSouth's use of jurisdictionally unseparated costs in its cost studies and its use of cost-price ratio comparisons to calculate its overhead allocation. Having already addressed these issue, the TRA applied the seventy-five percent (75%) intrastate separation factor to the non-traffic sensitive costs and the .6666 cost-price ratio and unanimously adopted the following maximum rates:

Payphone Line	Monthly Flat Rate	Usage Rate (per minute of usage)
PTAS ³⁰	\$13.78 ³¹ (exclusive of SLC, EULC, or PICC)	\$0.0042 ³²
SmartLine [®]	\$20.94 ³³ (exclusive of SLC, EULC, or PICC)	\$0.0042 ³⁴

BellSouth shall file compliant tariffs **no later than Friday, December 29, 2000**. Such tariffs shall become effective upon notification by the agency.

²⁹ The Directors did not vote on a reasonable allocation of overhead figure for UTSE for reasons that will become evident later in this Order.

³⁰ PTAS is an acronym for Pay Telephone Access Service and is sometimes referred to as a "dumb" line because the intelligence for certain payphone features, such as coin-handling, resides in the payphone set instead of the LEC's central office switch. For SmartLine[®] service, this intelligence resides in the LEC's switch. Additionally, SmartLine[®] and "dumb" line are terms used exclusively by BellSouth to describe their services.

³¹ For the calculation of this rate, see Exhibit 1 attached hereto.

³² For the calculation of this rate, see Exhibit 3 attached hereto.

³³ For the calculation of this rate, see Exhibit 2 attached hereto.

³⁴ For the calculation of this rate, see Exhibit 3 attached hereto.

2. Citizens' Rates

The TPOA argued that the coin supervision enabled line card³⁵ component of Citizens costs is not essential for the payphone services purchased by all PSPs. In addition, the TPOA contended that Citizens' direct costs should be adjusted to account for Citizens' use of jurisdictionally unseparated costs. Finally, the TPOA noted that Citizens' cost data is insufficient to produce a usage rate because Citizens failed to provide local usage on a per-minute basis.

Because the TPOA's testimony regarding the coin supervision enabled line card was not contradicted, the TRA held that a "dumb" line rate should be developed. In addition, the TRA found that Citizens' direct costs should be multiplied by a seventy-five percent (75%) intrastate cost separations factor to eliminate any double recovery resulting from the use of jurisdictionally unseparated costs.

At the Authority Conference held on November 21, 2000, the TRA asked Citizens to submit the average monthly minutes of use for payphone access lines for both companies. On November 29, 2000, Citizens responded by filing data that was not payphone-specific. Instead, the data was based on a 1996 traffic study that included 17,958 business lines. Because the calling patterns for measured business customers could substantially differ from the calling patterns for payphone lines, the TRA found, at the December 19th Conference, that it would not be appropriate to use the data to determine usage sensitive rates for payphone service.

Based on these findings, the TRA voted unanimously to order Citizens to file a payphone-specific study identifying the average monthly minutes of use per payphone access

³⁵ The use of the coin supervision enabled line card creates a line comparable to BellSouth's SmartLine[®] service.

line for each company **no later than Friday, December 29, 2000** and adopt the following non-traffic sensitive rates:

Company	Monthly Flat Rate	Coin Supervision Rate (per month)
Citizens of Tennessee	\$13.22 ³⁶ (exclusive of SLC, EULC, or PICC)	\$3.98 ³⁷
Citizens of the Volunteer State	\$17.78 ³⁸ (exclusive of SLC, EULC, or PICC)	\$3.96 ³⁹

Usage sensitive rates will be determined after Citizens has had an opportunity to submit payphone-specific average monthly minutes of use.

3. UTSE's rates

The TRA found that it has insufficient information to set rates for UTSE's payphone service due to deficiencies in UTSE's cost study. First, UTSE's cost study is not specific to payphone operations. While the calculation of the direct cost of payphone service elements like coin supervision and blocking and screening features obviously apply only to payphone service, UTSE's calculation of the direct cost of a payphone access line does not account for loop characteristics of a payphone access line. Second, the direct cost calculation contains expenses that appear to be corporate overheads. Regardless of the methodology used in its derivation of rates, direct cost measurements should not include overhead expenses. Without a proper measurement of direct cost, it is impossible to determine if the proposed rate is compliant with the new services test.

Based on the foregoing findings, the Directors voted unanimously to direct UTSE to file a payphone-specific cost study that is consistent with the methodology adopted for BellSouth and Citizens. The cost study shall be filed **no later than Friday, February 2, 2001**.

³⁶ For the calculation of this rate, see Exhibit 4 attached hereto.

³⁷ For the calculation of this rate, see Exhibit 5 attached hereto.

³⁸ For the calculation of this rate, see Exhibit 6 attached hereto.

³⁹ For the calculation of this rate, see Exhibit 7 attached hereto.

Additionally, the Directors voted unanimously to adopt the monthly flat and usage sensitive payphone rates adopted for BellSouth herein as interim rates for UTSE until such time as a compliant cost study is filed and permanent rates are established.

E. Compliance with State Law and the Remaining Factors

As previously stated, the rates calculated herein pursuant to the new services test must also comply with state law, particularly Tenn. Code Ann. § 65-4-123 and 65-5-208(c). Moreover, the rates must be consistent with the requirements of § 276 of the Act, cost-based, and nondiscriminatory.

Section 276 of the Act prohibits certain anti-competitive practices, such as cross-subsidization, preferences, predatory pricing, price squeezing, and price discrimination.⁴⁰ The rates adopted by the Authority apply to all PSPs, including the LECs' own payphone operations and affiliates. By applying the rates to all PSPs, the rates prevent the LECs from engaging in any of the above-listed anti-competitive practices. Furthermore, this action is consistent with Tenn. Code Ann. §§ 65-4-123, Tennessee's general telecommunications policy to foster the development of telecommunications by permitting competition in all telecommunications markets, and 65-5-208(c) as well as the dual goals of § 276 of the Act to promote competition and the widespread deployment of payphone services.

The rates adopted herein are cost-based rates. The rates are comprised solely of two cost factors. The first factor is the direct cost of providing the service, and the second factor is the LECs' general overhead costs, a portion of which is included in the rates. There are no other factors in the rate calculations. Furthermore, the LECs themselves provided the cost data upon which the rates were calculated.

⁴⁰ See *Report and Order*, ¶ 2.

Lastly, the rates are nondiscriminatory. As explained above the rates adopted in this docket apply to all providers of payphone service. In other words, BellSouth Public Communications, Inc., BellSouth's payphone affiliate, pays BellSouth the same rate for a payphone access line as a member of the TPOA. For this reason, the rates are nondiscriminatory.

F. Revision of Payphone Subsidy Calculations

Section 276 of the Act requires LECs to remove any subsidies attributable to payphones from intrastate rates. In 1997, the LECs filed payphone subsidy calculations based on their tariffed payphone rates as the companies' costs. The LECs also filed associated reclassification tariffs that ostensibly removed the calculated payphone subsidies from intrastate rates by reducing access rates. Both BellSouth and UTSE contend that these reclassification tariffs filed in 1997 were sufficient to remove their payphone operations from regulated services and, accordingly, allege that there are no payphone subsidies in any of today's rates.

The TRA found that BellSouth's and UTSE's contentions were without merit and held that it is necessary for the LECs to recalculate the payphone subsidy amounts based on the permanent payphone rates and to use such rates as the cost basis for calculating the subsidy. In other words, the tariffed rates the LECs used in their 1997 subsidy calculations should be replaced with the cost of providing payphone services as determined in this proceeding. The LECs then must file reclassification tariffs to adjust intrastate rates to reflect these corrected subsidy calculations in order to remove the appropriate amount of payphone subsidies from regulated operations. Based on these findings, the Directors voted unanimously to direct the LECs to correct their subsidy calculations once the Authority adopts permanent rates for each LEC by filing appropriate reclassification tariffs that remove any subsidies.

G. Reimbursement⁴¹

1. Federal Intent and Consumer Advocate Division v. Bissell

In September and November of 1996, the FCC ordered the LECs to file payphone access line tariffs no later than January 15, 1997 with an effective date of no later than April 15, 1997.⁴² In an April 4, 1997 Order of the Common Carrier Bureau, the Bureau restated the FCC's ruling that the LECs must comply with the requirements of the *Order on Reconsideration* "by April 15, 1997 for the payphone operations of LECs to receive payphone compensation."⁴³ Thereafter, certain LECs, including BellSouth, requested a waiver for forty-five (45) days to extend the requirement that the LECs' intrastate payphone tariffs comply with federal guidelines.⁴⁴ The FCC, Common Carrier Bureau, held:

Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines, we grant all LECs a limited waiver until May 19, 1997 to file intrastate tariffs for payphone services consistent with the guidelines established in the Order on Reconsideration, subject to the terms discussed herein. This waiver enables LECs to file intrastate tariffs consistent with the "new services" test of the federal guidelines required by the Order on Reconsideration and the Bureau Waiver Order, including cost support data, within 45 days of the April 4, 1997 release date of the Bureau Waiver Order and remain eligible to receive payphone compensation as of April 15, 1997, as long as they are in compliance with all of the other requirements set forth in the Order on Reconsideration. Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. The existing intrastate tariffs for payphone services will continue in effect until

⁴¹ This issue arose as a result of an order of the FCC, Common Carrier Bureau, that stated: "A LEC who seeks to rely on the waiver granted in the instant order must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates." See *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No.96-128, 12 FCC Rcd. 21,370, ¶¶ 25 (released April 15, 1997) (Order) (hereinafter *Second Waiver Order*). The *Agreed Motion for Continuance* filed by the TPOA on March 4, 1998 and the *Motion for Prejudgment Interest* filed on behalf of the TPOA on October 26, 2000 relate to the *Second Waiver Order*. In the 1998 motion, the parties agreed to the "postponement because, in accordance with directions from the FCC, whatever rates are fixed by the TRA in this proceeding will be retroactive to April, 1997. Therefore, no party is prejudiced by delay." This portion of the Interim Order addresses the obligations created by the *Second Waiver Order* and renders the *Motion for Prejudgment Interest* moot.

⁴² See *Payphone Order*, ¶¶ 186 & 370; *Reconsideration Order*, ¶ 163.

⁴³ *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No.96-128, 12 FCC Rcd. 20,997, ¶ 35 (released April 4, 1997) (Order) (hereinafter *Bureau Waiver Order*).

⁴⁴ See *Second Waiver Order*, ¶¶ 2, 13, 18, & 25.

the intrastate tariffs filed pursuant to the Order on Reconsideration and this Order become effective. A LEC who seeks to rely on the waiver granted in the instant order **must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates.**⁴⁵

The LECs in this docket acted pursuant to the waiver. BellSouth requested certification of its existing tariff as compliant by filing a tariff on May 19, 1997. UTSE filed a revised tariff on May 19, 1997. Citizens Telecommunication Company of the Volunteer State L.L.C. filed a revised tariff on April 7, 1997 and Citizens Telecommunications Company of Tennessee filed a revised tariff on March 26, 1997. UTSE and Citizens' tariff each contained effective dates of April 15, 1997.

The TRA found that the term "reimburse" as used by the FCC in the *Second Waiver Order* includes to make restitution and to make whole. On both its face and in context, the FCC intended for an affected party to be placed in the position he or she would have been if all the requirements established by the FCC had been met on April 15, 1997. Therefore, the TRA concluded that it would be inconsistent with the FCC's language not to recognize that to "reimburse" must include adjustments for inflation and the time value of money. The TRA found that the Consumer Price Index ("CPI") average annual change since 1997 was approximately two and four-tenths percent (2.4 %), the Gross Domestic Product-Price Index ("GDP-PI") average annual change since 1997 was approximately one and three-tenths percent (1.3%), and the three-year United States Treasury Bond rate has ranged between five (5) and six (6) percent since 1997.⁴⁶ The TRA further opined that the three-year, United States Treasury

⁴⁵ *Id.* ¶ 25 (bold emphasis added).

⁴⁶ The TRA took judicial notice of these facts by notice sent to all parties on December 8, 2000. The notice also stated that "[t]he parties may file written responses to the material so noticed by the TRA no later than **Friday, December 15, 2000 . . .**" No parties filed responses.

Bond rate represents the yield from a low-risk investment, accounts for inflation and the time value of money, and represents a reasonable overall adjustment.

In *Consumer Advocate Division v. Bissell*, the Court of Appeals affirmed the Public Service Commission's ("PSC") order approving a tariff that contained a refund provision.⁴⁷ The Court specifically recognized that, absent Tenn. Code Ann. § 65-5-203, the PSC may not approve temporary or tentative rates subject to a refund under state law, but then affirmed the PSC's award of the refund because the refund in *Bissell* was merely the third step in a plan governed by federal law.⁴⁸ Specifically, the Court held that the refund was necessary to "complete the obvious intent of the federal scheme to return the refund to the class that ultimately has had to pay it."⁴⁹ The same can be said for this case as it is incumbent upon the TRA to ensure compliance with the intent of the federal legislation expressed in § 276 of the Act as well as the FCC's rules and orders.

2. Tenn. Code Ann. §§ 65-5-208(c) and 65-4-123

Reimbursement that excludes the time value of money will not promote fully the goals of Tennessee's telecommunication legislation. The LECs in this docket are price-regulated companies whose practices must comply with Tenn. Code Ann. § 65-5-208(c). If the LECs do not reimburse the PSPs for the value the LECs received from holding the overpayments for over three years, then the LECs and their payphone operations or affiliates will receive a prospective subsidy and/or preference from PSPs who are owed a full reimbursement pursuant to FCC orders. In other words, the LECs will continue to benefit from overcharging the PSPs. Furthermore, this result will hamper competition in the payphone market because the LECs and

⁴⁷ *Consumer Adv. Div. v. Bissell*, No. 01A01-9601-BC-00049, 1996 WL 482970, *4 (Tenn. Ct. App. Aug. 28, 1996).

⁴⁸ *See id.* at *3-4.

⁴⁹ *Id.* at *3.

their payphone operations or affiliates will receive a subsidy or preference not available to the PSPs. Allowing such an environment to persist contravenes Tenn. Code Ann. §§ 65-5-208(c) and 65-4-123. Given the impact of the failure to apply the adjustment for inflation and the time value of money to the overpayments, the decision to award such adjustment is not only necessary to promote the intent and goals of Tenn. Code Ann. § 65-5-208(c) and the state's general telecommunications policy established in Tenn. Code Ann. § 65-4-123, but is also harmonious and consistent with those statutes.

3. Conclusions

Based on these findings and conclusions, the Directors voted unanimously to require the LECs to pay as reimbursement any overpayment⁵⁰ since April 15, 1997 adjusted to account for both inflation and the time value of money. Such adjustment shall equal six percent (6%) interest annually since April 15, 1997 on all overpayments received by the LECs from PSPs. The Directors also voted unanimously to require the payment of the reimbursement to PSPs **no later than sixty (60) days from December 19, 2000**. Any further adjustments needed after permanent rates are set for UTSE and Citizens shall be ordered at that time.

IT IS THEREFORE ORDERED THAT:

- 1) Payphone rates shall include a monthly flat rate component and a usage rate component.
- 2) To further study the need for deaveraged rates, the parties shall file comments **no later than Friday, February 16, 2001**.

⁵⁰ Overpayments are defined as the cumulative difference between the existing tariffed rates and the rates established in this proceeding.

3) The new services test is adopted as the appropriate test to use in calculating payphone access line rates.

4) When payphone rates are based on jurisdictionally unseparated costs, such costs must be adjusted using the seventy-five percent (75%) intrastate/twenty-five percent (25%) interstate separation factor used by the FCC to segregate non-traffic sensitive costs.

5) BellSouth Telecommunications, Inc. may assess a reasonable allocation of overhead for each of BellSouth Telecommunications, Inc.'s payphone service products that, at a maximum, results in a rate that is one and five-tenths (1.5) times greater than direct costs. Citizens Telecommunications Company of Tennessee L.L.C. and Citizens Telecommunications Company of the Volunteer State L.L.C. may set rates that, at a maximum, are based on the overhead allocation calculations contained in their cost studies filed in this docket.

6) The maximum non-traffic sensitive rate to be charged by BellSouth Telecommunications, Inc. for PTAS is \$13.78 per month exclusive of SLC, EULC, or PICC with a \$0.0042 charge per minute of usage. The maximum non-traffic sensitive rate to be charged by BellSouth Telecommunications, Inc. for SmartLine[®] is \$20.94 per month exclusive of SLC, EULC, or PICC with a \$0.0042 charge per minute of usage. BellSouth Telecommunications, Inc. shall file compliant tariffs **no later than Friday, December 29, 2000.**

7) Citizens Telecommunications Company of Tennessee L.L.C. may charge a maximum non-traffic sensitive rate of \$13.22 per month exclusive of SLC, EULC, or PICC with a \$3.98 charge per month for Coin Supervision. Citizens Telecommunications Company of the Volunteer State L.L.C. may charge a maximum non-traffic sensitive rate of \$17.78 per month

exclusive of SLC, EULC, or PICC with a \$3.96 charge per month for Coin Supervision. Citizens Telecommunications Company of Tennessee L.L.C. and Citizens Telecommunications Company of the Volunteer State L.L.C. shall file a payphone-specific study identifying the average monthly minutes of use per payphone access line **no later than Friday, December 29, 2000.**

8) United Telephone-Southeast, Inc. shall file a payphone-specific cost study that is consistent with the methodology adopted for BellSouth Telecommunications, Inc., Citizens Telecommunications Company of Tennessee L.L.C., and Citizens Telecommunications Company of the Volunteer State L.L.C. **no later than Friday, February 2, 2001.** In the interim, United Telephone-Southeast, Inc. shall charge the flat and usage sensitive rates adopted for BellSouth Telecommunications, Inc. herein.


9) BellSouth Telecommunications, Inc., United Telephone-Southeast, Inc., Citizens Telecommunications Company of Tennessee L.L.C., and Citizens Telecommunications Company of the Volunteer State L.L.C. shall correct their subsidy calculation as specified herein and file appropriate reclassification tariffs once the TRA sets permanent rates for such company.

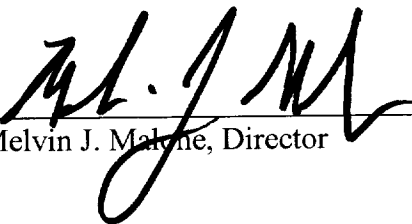
10) In order to fully reimburse all payphone service providers, BellSouth Telecommunications, Inc., United Telephone-Southeast, Inc., Citizens Telecommunications Company of Tennessee L.L.C., and Citizens Telecommunications Company of the Volunteer State L.L.C. shall pay to all payphone service providers the true-up amount plus six percent (6%) interest annually since April 15, 1997. Such payment shall be made **no later than sixty days from December 19, 2000.**

11) The calculations of rates described in Exhibits 1-7 are adopted and incorporated in this Order by this reference.

12) Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

EXHIBIT 1

**BELLSOUTH TELECOMMUNICATIONS, INC.
CALCULATION OF RATES
PTAS NON-TRAFFIC SENSITIVE RATE**

Line	Description	Amount	
1	PTAS Loop Cost	\$10.28	1/
2	PTAS Non-Traffic Sensitive Line Termination Cost	1.49	2/
3	PTAS Central Office Blocking & Screening	0.17	3/
4	Product Support Cost	<u>0.31</u>	4/
5	Total Non-Traffic Sensitive Direct Cost – Unseparated	\$12.25	5/
6	Intrastate Cost Separations Factor (75%)	<u>.75</u>	
7	Total Non-Traffic Sensitive Direct Cost – Separated	\$ 9.19	6/
8	Reasonable Overhead Factor (Cost-Price Ratio=0.6666)	<u>1.50</u>	
9	PTAS Non-Traffic Sensitive Costs Including Overhead	<u>\$13.78</u>	7/

1/ BellSouth Cost Study at Section 1, p. iv.

2/ BellSouth Cost Study at Section 1, p. iv.

3/ BellSouth Cost Study at Section 1, p. iv.

4/ BellSouth Cost Study at Section 1, p. iv.

5/ L1 + L2 + L3 + L4.

6/ L5 * L6.

7/ L7 * L8.

EXHIBIT 2

**BELLSOUTH TELECOMMUNICATIONS, INC.
CALCULATION OF RATES
SMARTLINE NON-TRAFFIC SENSITIVE RATE**

Line	Description	Amount	
1	SmartLine Loop Cost	\$16.54	1/
2	SmartLine Non-Traffic Sensitive Line Termination Cost	1.71	2/
3	SmartLine Central Office Blocking & Screening	0.05	3/
4	Product Support Cost	<u>0.31</u>	4/
5	Total Non-Traffic Sensitive Direct Cost – Unseparated	\$18.61	5/
6	Intrastate Cost Separations Factor (75%)	<u>.75</u>	
7	Total Non-Traffic Sensitive Direct Cost – Separated	\$13.96	6/
8	Reasonable Overhead Factor (Cost - Price Ratio = 0.6666)	<u>1.50</u>	
9	SmartLine Non-Traffic Sensitive Costs Incl. Overhead	<u>\$20.94</u>	7/

1/ BellSouth Cost Study at Section 1, p. iv.

2/ BellSouth Cost Study at Section 1, p. iv.

3/ BellSouth Cost Study at Section 1, p. iv.

4/ BellSouth Cost Study at Section 1, p. iv.

5/ L1 + L2 + L3 + L4.

6/ L5 * L6.

7/ L7 * L8.

EXHIBIT 3

**BELLSOUTH TELECOMMUNICATIONS, INC.
CALCULATION OF RATES
PAYPHONE LINE TRAFFIC SENSITIVE RATE**

<u>Line</u>	<u>Description</u>	<u>Amount</u>	
1	Average Minutes Per Payphone Call	2.98	1/
2	Average Payphone Calls Per MonthPer Line	<u>237</u>	2/
3	Average Payphone Minutes of Use Per Month	706.26	3/
4	Monthly Traffic Sensitive Direct Cost	<u>\$ 1.96</u>	4/
5	Per Minute Usage Direct Cost	\$ 0.0028	5/
6	Reasonable Overhead Factor (Cost – Price = 0.6666)	<u>1.50</u>	
7	Per Minute Usage Sensitive Cost Including Overhead	<u>\$ 0.0042</u>	6/

1/ BellSouth Cost Study at Appendix A, p. 2.

2/ BellSouth Cost Study at Appendix A, p. 2.

3/ L1 * L2.

4/ BellSouth Cost Study at Section 1, p. iv.

5/ L4 / L3.

6/ L5 * L6.

EXHIBIT 4**CITIZENS OF TENNESSEE
CALCULATION OF RATES
PAYPHONE SERVICE LINE RATE**

<u>Line</u>	<u>Description</u>	<u>Amount</u>	
1	Service Line Direct Cost	\$12.17	1/
2	Allocated Overhead	<u>5.46</u>	2/
3	Service Line Direct Cost with Overhead Allocated – Unseparated	\$17.63	3/
4	Intrastate Cost Separations Factor (75%)	<u>.75</u>	
5	Service Line Direct Cost with Overhead Allocated – Seperated	<u>\$13.22</u>	4/

1/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

2/ L3 – L1.

3/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

4/ L3 * L4.

EXHIBIT 5

**CITIZENS OF TENNESSEE
CALCULATION OF RATES
COIN SUPERVISION FEATURE RATE**

<u>Line</u>	<u>Description</u>	<u>Amount</u>	
1	Coin Supervision Direct Cost	\$ 3.09	1/
2	Allocated Overhead	<u>2.22</u>	2/
3	Coin Supervision Direct Cost with Overhead Allocated – Unseparated	\$ 5.31	3/
4	Intrastate Cost Separations Factor (75%)	<u>.75</u>	
5	Coin Supervision Direct Cost with Overhead Allocated – Separated	<u>\$ 3.98</u>	4/

1/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

2/ L3 – L1.

3/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

4/ L3 * L4.

EXHIBIT 6

**CITIZENS OF THE VOLUNTEER STATE
CALCULATION OF RATES
PAYPHONE SERVICE LINE RATE**

<u>Line</u>	<u>Description</u>	<u>Amount</u>	
1	Service Line Direct Cost	\$15.62	1/
2	Allocated Overhead	<u>8.09</u>	2/
3	Service Line Direct Cost with Overhead Allocated – Unseparated	\$23.71	3/
4	Intrastate Cost Separations Factor (75%)	<u>.75</u>	
5	Service Line Direct Cost with Overhead Allocated – Separated	<u>\$17.78</u>	4/

1/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

2/ L3 – L1.

3/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

4/ L3 * L4.

EXHIBIT 7

**CITIZENS OF THE VOLUNTEER STATE
CALCULATION OF RATES
COIN SUPERVISION FEATURE RATE**

<u>Line</u>	<u>Description</u>	<u>Amount</u>	
1	Coin Supervision Direct Cost	\$ 3.09	1/
2	Allocated Overhead	<u>2.19</u>	2/
3	Coin Supervision Direct Cost with Overhead Allocated – Unseparated	\$ 5.28	3/
4	Intrastate Cost Separations Factor (75%)	<u>.75</u>	
5	Coin Supervision Direct Cost with Overhead Allocated – Separated	<u>\$ 3.96</u>	4/

1/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

2/ L3 – L1.

3/ Direct Testimony of Scott Kitchen, Exhibit to Testimony (filed September 18, 2000).

4/ L3 * L4.